

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.07.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.23 of 2008
and
MP.No.1 of 2009

Elumalai

...Appellant /petitioner

Vs.

1.Krishnaveni

2.The Branch Manager,
United India Insurance Company Ltd.,
No.28, Mailam Road,
Tindivanam.

...Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 24.11.2003 made in (Tindivanam S.C.M.C.O.P.No.93 of 1998) FTC II MCOP.No.256 of 2002 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.2) Tindivanam.

For Appellant : M/s.P.Mani

For R1 : Mr.S.Arunkumar

R2 : M.L.Ganesh

JUDGMENT

The facts of the case in brief, are as follows:

On 04.12.1995, the appellant/claimant travelled in the mini lorry bearing Reg.No.TCO-0029, belonging to the first respondent and insured with the appellant Insurance Company, for taking Ulunthu bags from his native Siruvai Village to Vikravandi Marketing Committee. The said lorry was proceeding in the G.S.T.Road. When it reached near Basheer Rice Mill at about 12.50 hours on that day, the driver tried to overtake another lorry in a rash and negligent manner and due to the same, the lorry got capsized. Due to the said impact, the appellant fell down from the lorry along with the goods and sustained multiple fractures and injuries all over the body. The appellant claimed a sum of Rs.2,00,000/- as compensation before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.40,000/- with interest at the rate of 9% per annum from the date of petition.

2.Challenging the same, the appellant-claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

3.The learned counsel for the appellant /claimant has submitted that the Tribunal, having found that the accident had occurred only due to the rash and negligent driving of the lorry, erred in awarding a lesser compensation of Rs.40,000/- as against the claim of Rs.2,00,000/-. It is also submitted that the Tribunal ought to have held that the claimant was travelling in the mini lorry as the owner of the goods and that the Insurance Company is also liable to pay compensation to the claimant.

4.The learned counsel for the second respondent / Insurance Company has submitted that the Tribunal, after considering the materials and evidence available on record in proper perspective, has correctly come to the conclusion that the claimant travelled in the mini lorry as gratuitous passenger and accordingly exonerated the Insurance Company from the liability and hence the same need not be interfered with by this Court.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.The details of compensation awarded by the Tribunal are as follows:

HEADS	AMOUNT (Rs.)
Injuries	25,000/-
Treatment	5,000/-
Pain and suffering	10,000/-
TOTAL...	40,000/-

7.It is seen that the claimant had not filed any bill or voucher for having booked the carriage of goods to show that he was the owner of the goods. According to the evidence of P.W.2, who is known to the claimant, several persons travelled in the vehicle with the permission of the driver, by sitting on the top of the ulunthu bags and the claimant has also travelled similarly. Since there was violation of policy conditions, the Tribunal held that the Insurance Company is not liable to pay compensation to the claimant and accordingly directed the owner of the vehicle to pay the same. This Court is not inclined to interfere with such a factual finding arrived at by the Tribunal.

8.With regard to quantum of compensation, since no

Orthopaedic Surgeon was examined to show that the claimant sustained 40% disability as per Ex.P12, considering the nature of injuries sustained by the claimant, the Tribunal has awarded the above amounts. The amounts awarded are found to be reasonable and hence the same are confirmed.

9.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. The first respondent is directed to deposit the compensation with interest and costs, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO MDU)

//True Copy//

Sub Assistant Registrar

Gv

To

1.The Motor Accidents Claims Tribunal
(Fast Track Court No.2) Tindivanam.

2.The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.P.Mani, Advocate, S.R.No. 64284

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 64355

C.M.A.No.23 of 2008

LN(CO)
GN(07/10/2020)

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